

# ENERGY SERVICES LLC STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS

## ACCEPTANCE

The shipment by Seller of any goods, the furnishing of any service, the acceptance of any payment by Seller, or any other conduct by Seller which recognizes the existence of a contract shall constitute an unqualified acceptance by Seller of these terms and conditions. Any terms and conditions proposed in Seller's acceptance of Buyer's offer or in any acknowledgment, invoice, or other form of Seller that add to, vary from, or conflict with these terms are hereby objected to. Any such proposed terms shall be void and these terms and conditions (1) shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties and apply to each shipment received by Buyer from Seller and (2) may be modified only by written instrument executed by the authorized representatives of both parties.

## DEFINITIONS

As used throughout these terms and conditions, the following definitions apply unless otherwise specifically stated:

1. **"Buyer"** means Energy Services LLC.
2. **"Purchase Order" or "Order"** means the document entitled Purchase Order, referencing a purchase order number and description of goods or services.
3. **"Purchase Order Terms and Conditions"** means this contractual instrument, including change notices, supplements, amendments, or modifications thereto.
4. **"Seller"** means the legal entity performing work for or supplying goods to Buyer pursuant to an order.
5. **"Government"** means the Government of the United States unless otherwise specified.
6. **"Goods," "Supplies," or "Items"** means those part numbers, model numbers and/or descriptions set forth on the face of a Purchase Order.
7. **"Services"** means any effort supplied by Seller incidental to the sale of goods by Seller under a Purchase Order including, but not limited to, installation, repair and maintenance services. The term "services" shall also include, without limitation, any effort specifically required by a Purchase Order such as design, engineering, maintenance, technical, construction, consulting or professional services.

## SHIPPING AND BILLING INSTRUCTIONS

1. **PACKING** - Unless otherwise specified, standard commercial preservation, packing, packaging, crating, and skidding is acceptable.
2. **MARKING** - Exterior containers must be marked with the following: (i) address, (ii) Purchase Order number, (iii) any other special markings called for by a Purchase Order and (iv) any other markings consistent with good commercial practice for the protection and the safe unloading of the goods.
3. **BILL OF LADING** - The bill of lading must reference the Purchase Order number and correct ship to address. When delivery point is FCA Seller's or Seller's supplier's designated facility (per INCOTERMS 2010) make NO declaration of value on bill of lading EXCEPT where a declaration of value will result in lower total cost of shipment, and then declare such value as will entitle Buyer to the lowest applicable transportation rates.
4. **SHIPPING** - On orders where Buyer either pays for or reimburses Seller directly for shipping costs, ship in accordance with routing instructions furnished by Buyer. If such instructions are not received, Seller shall secure the least expensive transportation method consistent with good commercial practice for protection and shipment of the goods shipped.
5. **PACKING SLIP** - Include with each shipment of goods a packing slip which displays the (i) Purchase Order number, (ii) Purchase Order item number, (iii) item nomenclature/description, (iv) item part number, (v) item serial number (where applicable), (vi) the quantity of items shipped, (vii) the invoice number/packing slip number, (viii) the date shipped, (ix) the ship to address, and (x) method of shipment and bill of lading number.
6. **INVOICE** - Render a separate invoice in duplicate to Buyer's Accounts Payable Department on the day of each shipment made pursuant to a Purchase Order and indicate thereon: (i) the location to which the item has been shipped, (ii) the Purchase Order number, (iii) the item nomenclature/description, (iv) the item part number, (v) item serial number (where applicable), (vi) quantity of items shipped, (vii) invoice number/packing slip number, (viii) date shipped, (ix) ship to address and (x) method of shipment and bill of lading number.

## SPECIFICATIONS

Seller shall comply with all specifications stated in a Purchase Order.

## INSPECTION/REJECTION

- (a) Buyer and Buyer's customer (if applicable) shall have the right to inspect and test the material and workmanship of all goods or services required under a Purchase Order at all places and times including, when practicable, during the period of manufacture or performance; and if any such inspection or test is made on the premises of Seller, Seller shall furnish, without additional charge to Buyer, all reasonable facilities and assistance for the safe and convenient performance of the inspection or test.
- (b) Notwithstanding (i) prior inspection, (ii) payment for, or (iii) use of the goods or services, Buyer shall have the right to reject any of such goods or services which do not conform to all requirements of a Purchase Order. Such right shall be exercisable within the period provided in Buyer's applicable specification, or elsewhere in the Purchase Order, or in the absence thereof, within six (6) months following Buyer's receipt of the goods or services. Buyer may require re-performance of rejected services. If this is a fixed price, cost reimbursement, time & material or labor-hour type order, re-performance shall be at Seller's expense. If timely re-performance of acceptable services cannot be accomplished or is not feasible, Buyer may reduce any profit or fee amounts due for the work not performed, purchase the services from another source and charge any cost increase to Seller, or may terminate the order for default in accordance with the section entitled TERMINATION FOR DEFAULT. Rejected goods shall be returned to Seller at Seller's risk and expense (transportation collect declared at full value, unless Seller advises otherwise) for full credit or refund (at Buyer's option) excepting, however, those goods which Buyer elects to repair at Seller's expense or to retain at an equitable reduction in price. The rejected goods returned to Seller shall not be replaced by Seller except upon written instruction from Buyer. Rejected goods shall not again be tendered for acceptance without disclosure of former rejection. Resubmitted goods must be shipped separately. Should Buyer elect to repair the non-conforming goods, all terms and conditions of the Purchase Order shall remain in full force and effect as to the goods furnished by Seller. Prior inspection or test, payment for, or use of the goods or services does not relieve Seller from any responsibility regarding defects or other failures to meet the requirements of a Purchase Order which may be discovered prior to acceptance. Acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud. Buyer's rights under this subparagraph shall be in addition to and shall not be deemed to diminish its rights under this paragraph or under the section entitled WARRANTY.
- (c) In the event that Buyer's customer charges Buyer for additional costs related to inspection or test when goods are not ready at the time specified by Seller or when prior rejection makes re-inspection or retest necessary, Buyer shall have the right to reduce the amount payable under the Purchase Order; such right to include, without limitation, Buyer's right to deduct or setoff pursuant to paragraph entitled ASSIGNMENT AND SETOFF.

## WARRANTY

- (a) In addition to any other express or implied warranties, Seller warrants to Buyer, its successors, assigns, customers, and users of goods sold by Buyer that all goods shall be (i) merchantable; (ii) new; (iii) of the grade and quality specified; (iv) free from defects in material and workmanship; (v) with regard to goods designed by Seller, free from defects in design; (vi) suitable for the purposes intended whether expressed or reasonably implied; (vii) in compliance with all applicable specifications, drawings, and performance requirements; (viii) free from liens or encumbrances on title; and (ix) free from latent defects. Delivery, inspection, test, acceptance or use of or payment for the goods shall not affect Seller's obligation under this warranty. Seller agrees to correct defects in or replace any goods not conforming to the foregoing warranty promptly, without expense to Buyer, when notified of such nonconformity by Buyer, provided Buyer elects to provide Seller with the opportunity to do so. All deliveries of corrected or replaced goods made pursuant to Buyer's election shall be accompanied by a written notice specifying that such goods are corrections or replacements. In the event that Seller is directed to correct defects in or replace non-conforming goods and fails to do so promptly, Buyer, after reasonable notice to Seller, shall have the right to correct or replace such goods and charge Seller for the cost incurred by Buyer in doing so, such right to include, without limitation, Buyer's right to deduct or setoff pursuant to the section entitled ASSIGNMENT AND SETOFF.
- (b) If services or technical data are to be provided by Seller. Seller warrants to Buyer that such services and/or technical data have been performed or prepared in a professional and workmanlike manner.

## INFRINGEMENT INDEMNITY

- (a) As to goods or services ordered, Seller shall be liable for and shall indemnify and save Buyer and each subsequent purchaser or user thereof, harmless from any infringement claim, suit or action, including, but not limited to, proceedings under 28 U.S.C. Section 1498, alleging that the manufacture, use, sale, or importation of such goods or services infringes any patent, trademark, copyright, semiconductor chip product mask work right or other proprietary right; except, however, that when such alleged infringement arises as a necessary consequence of Seller's compliance with specifications or designs furnished by Buyer which describe that aspect of the goods or services on which such alleged infringement is based, then Buyer shall be liable and shall save Seller harmless therefrom, but this exception shall not apply if the subject matter giving rise to the claim for infringement either (i) was derived from, or selected by Seller, or (ii) relates to materials or compositions, or processes relating to materials or compositions.
- (b) The party against whom such infringement claim is made, or such suit or action is made or commenced, shall promptly notify the other party in writing. The party required to indemnify under the provisions of paragraph (a) hereof shall promptly assume and diligently conduct the entire defense of such alleged infringement at its own expense, provided that such party receives prompt written notice of such claim, suit, or action if such is commenced against the other party. Insofar as its interests are affected, the other party shall have the right, at its own expense and without releasing any obligation, liability, or undertaking of the party required to indemnify, to: (i) cooperate in the defense of such claim, and (ii) with permission of the court, to intervene in any such suit or action.
- (c) Notwithstanding any of the above provisions, Buyer shall have the further right, at its own election, to supersede Seller in the defense of any such alleged infringement and thereafter to assume and conduct the same according to Buyer's sole discretion, in which event Seller shall be released from any obligation arising from such infringement claim, suit or action under this infringement indemnity clause. Further, Seller, if requested in writing by Buyer, shall cooperate with Buyer in Buyer's defense of any alleged infringement claim.

## SOFTWARE LICENSE

Buyer is licensed to copy any software provided under a Purchase Order onto a computer memory device and to make back-up copies of such software. Unless otherwise provided for in a Purchase Order, Buyer's sole obligation with respect to software shall be to use such software in compliance with applicable U.S. copyright laws and regulations, irrespective of any other license agreement including, but not limited to, any license agreement packaged with such software.

## PATENTS AND COPYRIGHTS

- (a) Seller agrees that, for any works of authorship created by Seller or any employees or subcontractors of Seller in the course of a Purchase Order, those works that come under one of the categories of Works Made for Hire in 11 USC. 101 shall be considered Works Made for Hire. For any works of authorship that do not come under such categories, Seller, warranting that it has the right to do so, hereby assigns and agrees to assign all right, title, and interest it has to any copyright in such works and will execute or cause to be executed at Buyer's expense any documents required to establish Buyer's ownership of such copyright.
- (b) Seller agrees to disclose promptly to Buyer all inventions, discoveries, and improvements, patentable and unpatentable, made or first actually reduced to practice in the performance of, or arising out of, the goods and/or services furnished to Buyer by Seller or by any employees or Subcontractors of Seller in performance of a Purchase Order (hereinafter "Intellectual Property"). All such Intellectual Property and any patents or other intellectual property protection therefore shall become the exclusive property of Buyer, and Buyer shall have a worldwide, paid-up, non-exclusive license in any improvements thereto, but not in related background patents. The Seller hereby undertakes and agrees to assist Buyer by reviewing documents, providing data, and executing such assignments and other papers which, in the opinion of Buyer are necessary at any time to permit the filing and prosecution of any applications for patents covering the inventions, discoveries or improvements or are otherwise required for compliance with the provisions of this paragraph. In the event that others are, or may hereafter become, associated with Seller or are used by Seller in connection with the work called for by a Purchase Order, Seller agrees to procure from them similar agreements and to cooperate with Buyer in obtaining assistance and data, and in procuring execution by them of such assignments and other papers as may be required.

## PROTECTION OF BUYER'S PROPRIETARY INFORMATION

- (a) **Buyer's Proprietary Information**  
Seller agrees that all information on or related to dimensions, materials and processes necessary or useful to define the configuration, design features and structural strength of any of Buyer's products or any components and parts thereof, including without limitation:
  - (i) designs, processes, drawings, prints, specifications, reports, data and other technical or business information, whether in a document, computer file or any other tangible form of expression,
  - (ii) dimensions, features, materials, markings and tolerances of all parts, equipment, tools, gauges or patterns, other than those which are published by Buyer in manuals, bulletins and other publications which Buyer makes generally available to industry, and
  - (iii) information in any form bearing Buyer's Document Property Rights Notice or any similar legend declaring that the information is the property of or otherwise proprietary to Buyer that Buyer provides or has provided, discloses or has disclosed to Seller at any time in connection with this Order or prior Orders for the provision of goods or Services of the type or kind described by this Order shall be the exclusive property of Buyer and shall be considered "Buyer's Proprietary Information."
- (b) **Receipt and Protection of Buyer's Proprietary Design Information**
  - (i) Seller agrees to inspect upon receipt of all information provided to Seller by or for Buyer bearing Buyer's Document Property Rights Notice or any similar restrictive legend, and prior to any copying, use, disclosure or transfer of the information, to notify Buyer in writing through Buyer's cognizant Purchasing Department of any such information which Seller believes is not Buyer's Proprietary Information. Seller agrees that failure to provide such notice prior to copying, use, transfer or disclosure of such information shall waive any subsequent claim by Seller that such information is not required to be treated as Buyer's Proprietary Design Information under this Section.
  - (ii) Seller agrees not to receive or accept Buyer's Proprietary Information knowingly from any person, firm, corporation or entity other than Buyer, with the exception of Buyer's Proprietary Information furnished in connection with solicitations or purchase orders issued by a partner or higher-tier supplier of Buyer which expressly reference a Buyer Purchase Order or contain the certification required under this Section, without Buyer's express written consent.
  - (iii) Seller agrees and promises to keep Buyer's Proprietary Design Information confidential, and strictly protect it against any use, disclosure or transfer not expressly permitted under this section.
  - (iv) Seller promises and agrees to cause all documents and records (including computer or other electronic records) containing or derived in whole or in part from Buyer's Proprietary Information or containing Seller-developed Buyer's Proprietary Information to bear the following legend:

## WARNING

- This document is the property of Energy Services LLC. You may not possess, use, copy or disclose this document or any information in it, for any purpose, including without limitation to design, manufacture, or repair parts, or obtain any needed government approval to do so, without express written permission. Neither receipt nor possession of this document alone, from any source, constitutes such permission. Possession, use, copying or disclosure by anyone without express written permission of Energy Services LLC is not authorized and may result in criminal and/or civil liability.
- (v) Seller agrees and promises to notify Buyer in writing through Buyer's cognizant Purchasing Management when Seller is manufacturing parts with the same form, fit and function for Buyer and another entity so that Buyer may ensure Buyer's Proprietary Design Information is not being misused. In addition, Seller agrees and promises that those persons working for or at the direction of Seller who are exposed to Buyer's Proprietary Design Information for Buyer's parts will have no involvement in the manufacture of parts with the same form, fit and function for any entity other than Buyer without the prior written approval from Buyer.
  - (c) **Seller-Developed Information**

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Information and ideas specifically developed by Seller under, or in the course of performing this Purchase Order which are required for the design definition or unique production requirements of the goods or services required shall be owned by and disclosed by Buyer at Buyer's direction, and shall be treated as Buyer Proprietary Design Information. Such information includes without limitation designs, unique processes, drawings, prints, unique specifications, reports, data, and other technical information, regardless of form, and all unique equipment, tools, gauges, patterns, process sheets or work instructions related to such goods or services.

## (d) Use of Buyer's Proprietary Information

(i) Seller agrees and promises to use Buyer's Proprietary Information only to perform this Order or other Orders for Buyer, and not to use Buyer's Proprietary Information for any other purpose, including without limitation to design, manufacture or repair a part or detail of a part, compare a part or design of a part, or obtain any needed government approval to manufacture or repair a part, without Buyer's express written consent.

(ii) Buyer hereby expressly consents to Seller's use of Buyer's Proprietary Information to respond to a solicitation from or perform purchase orders for a partner of or higher-tier supplier for Buyer when the solicitation or purchase order expressly references a Buyer Order or contains the following certification: "Goods or services required are solely for Buyer, a subsidiary, parent, division, or affiliate of Buyer, or a partner thereof acting pursuant to a Partnership Agreement."

## (e) Disposition of Scrap or Surplus Goods Manufactured Using Buyer's Proprietary Information

Seller agrees and promises not to sell or dispose of as scrap or otherwise any completed or partially completed or defective goods manufactured using Buyer's Proprietary Information without mutilating said goods in the manner prescribed by Buyer's pertinent parts mutilation standards, or in another manner approved in writing by Buyer.

## (f) Disclosure or Transfer of Buyer's Proprietary Information

(i) Seller agrees and promises not to disclose or transfer Buyer's Proprietary Information to any other person, firm, corporation or entity without Buyer's express written consent.

(ii) Buyer hereby expressly consents to Seller's disclosure or transfer of Buyer's Proprietary Information to its subcontractors or potential subcontractors to the extent strictly necessary to respond to solicitations from or perform this Order for Buyer or purchase orders for a partner of or higher-tier supplier for Buyer as permitted by this Section. Seller agrees and promises to ensure that any such transfer or disclosure is made under a written solicitation, agreement or subcontract by which the recipient of Buyer's Proprietary Information accepts and is bound by each and every obligation of this Section. Seller agrees and promises not to transfer or disclose Buyer's Proprietary Information to any person, firm, corporation or entity for any other purpose, including without limitation to design, manufacture or repair a part or detail of a part, compare a part or design a part, or apply for government approval to manufacture a part, without Buyer's express written consent.

## (g) Disposition of Buyer's Proprietary Information on Completion or Termination

At any time following completion or termination of this Order, Seller shall, at Seller's expense, make such disposition of all Buyer's Proprietary Information as Buyer may direct. Without limitation, Seller shall remain and continue to be obligated to perform each and every provision of this Section, notwithstanding completion or termination of this Order.

## (h) Audit and Inspection

Buyer shall have the right to audit all pertinent books and records of Seller, and to make reasonable inspection of Seller's premises, in order to verify compliance with this Section.

## CHANGES

(a) Buyer may, at any time and without notice to sureties (if any), unilaterally make changes within the general scope of a Purchase Order, including, but not limited to, changes to any one or more of the following: (i) shipping or packing instructions; (ii) place of delivery; (iii) any drawings, designs, or specifications; (iv) the statement of work; (v) the method or manner of performance of the work; (vi) Buyer-furnished property, facilities, equipment, materials, or services; or (vii) the schedule of performance of the work. Seller shall perform any changes ordered by Buyer.

(b) Buyer's engineering, technical and other non-Purchasing Department personnel are not authorized to change the goods or services ordered or any provisions, drawings, designs, or specifications of a Purchase Order. No change will be binding on Buyer unless issued in writing by an authorized representative of Buyer's Purchasing Department. Any other written or oral order will be treated as a change if and only if, prior to performance of such order, Seller gives Buyer written notice stating the date, circumstances, and source of the order and stating that Seller regards such order as a change.

(c) Subject to paragraph (d) hereof, if any change under this clause causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment shall be made in the cost/price or delivery schedule or both, and the order shall be modified in writing accordingly. Any claim by Seller for adjustment under this clause, however, must be submitted in writing in the form of a complete change proposal fully supported by factual information, to Buyer not later than fifteen (15) business days after the date of receipt by Seller of the change order, or within such extension of the fifteen day period as Buyer, in its sole discretion, may grant in writing at Seller's request, except that no claim for equitable adjustment hereunder shall be allowed if it is asserted after final payment of the order.

(d) Notwithstanding an ongoing claim for an adjustment submitted by Seller, Seller shall diligently proceed with the performance of the Purchase Order, as directed by Buyer, and nothing herein shall be construed as relieving Seller of its obligations to so perform, including, but not limited to, the failure of the parties to agree upon Seller's entitlement to, or the amount or nature of, any such adjustment.

(e) Where the cost of property made obsolete or excess as a result of a change is included in Seller's claim for adjustment, Buyer shall have the right to prescribe the manner of disposition of such property.

## ASSIGNMENT AND SETOFF

(a) Performance of a Purchase Order shall not be assigned by Seller, in whole or in part, without the prior written consent of Buyer. Any prohibited assignment by Seller shall be null and void, shall be deemed a material breach of the Purchase Order, and Seller shall remain liable to Buyer for full performance of its covenants, duties, liabilities and obligations.

(b) Claims for money due or to become due to Seller from Buyer arising out of a Purchase Order may not be assigned, unless such assignment is made to one assignee only and covers all amounts payable under a Purchase Order and not already paid. Any such assignment shall be subject to Buyer's rights under paragraph (c) hereof. Buyer shall be under no obligation to pay such assignee unless and until Buyer shall have received written notice of the assignment from Seller, a certified copy of the instrument of assignment, and suitable documentary evidence of Seller's authority to so assign. However, any payments made to a third party subsequent to Buyer's receipt of notice that any claims for money due or to become due have been assigned or should be paid thereto shall fulfill Buyer's requirements to make any such payments.

(c) All claims for money due or to become due from Buyer shall be subject to deduction or setoff by Buyer by reason of any counterclaim arising out of any transaction with Seller.

## FORCE MAJEURE/EXCUSABLE DELAYS

(a) Buyer may delay Seller's delivery, Buyer's acceptance or Buyer's payment for the goods when such delays are occasioned by causes beyond Buyer's control. Seller shall hold such goods at the direction of Buyer and shall deliver them when the cause effecting the delay has been removed. Buyer's sole liability and Seller's sole remedy for any such delay shall be limited to Seller's direct additional costs in holding the goods or delaying performance of a Purchase Order. Causes beyond Buyer's control may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather.

(b) Seller shall not be charged with any liability for failure or delay in making deliveries when such failure or delay is due to any cause beyond the control and without the fault or negligence of Seller; provided that Seller shall give to Buyer prompt notice in writing when it appears that such cause will result in failure or delay in making deliveries under a Purchase Order. In the event of any such failure or delay, Buyer shall have the right at its option and without being under any liability to Seller to cancel by notice in writing to Seller the portion or portions of a Purchase Order so affected.

## COMPLIANCE WITH LAWS

In the performance of a Purchase Order, Seller shall comply with all applicable federal, state and local laws, ordinances, rules and regulations including those relating to pollution control, waste disposal, hazardous

substances, and protection of the environment; and Seller shall hold Buyer harmless from and against any and all liability due to Seller's failure to so comply. If in connection with the products to be delivered under a Purchase Order, Seller is required to comply with the Occupational Safety and Health Act's hazardous communication standard (48 Fed. Reg. 53280 (1983)), Seller agrees to provide Buyer with copies of the applicable Material Safety Data Sheets at the time of delivery of the products which require such compliance, and any updates of such sheets required to be delivered by Seller under such laws and regulations.

## SELLER'S FINANCIAL STATUS

Buyer may terminate a Purchase Order for default in the event of:

- the appointment, with or without Seller's consent, of any trustee, liquidator, assignee, custodian, sequester or receiver for any substantial portion of Seller's assets;
- proceedings, voluntary or involuntary, in bankruptcy or insolvency, by or against Seller; or
- Seller's admission of inability to pay its debts generally as they come due.

## TERMINATION FOR DEFAULT

(a) Buyer may, by written notice, terminate the whole or any part of a Purchase Order for default in the following circumstances:

- if Seller fails to deliver the supplies or perform the service by the specified delivery or completion date or any extension thereof granted by Buyer in writing; or
- if Seller fails to perform any of the other provisions of a Purchase Order or so fails to make progress as to endanger performance of the order in accordance with its terms and Seller does not cure such failure to Buyer's reasonable satisfaction within a period of ten (10) business days after receipt of notice from Buyer specifying such failure; or
- if Seller falsifies information describing its qualifications; or
- if Seller is shown to be significantly deficient in EH&S performance and/or capabilities.

(b) In the event Buyer terminates a Purchase Order in whole or in part as provided in this clause, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, goods similar to those so terminated, and Seller shall be liable to Buyer for any excess costs for such similar goods, provided, however, that Seller shall continue the performance of the order to the extent not terminated under the provisions of this clause.

(i) If the failure to perform is caused by the default of a vendor or subcontractor to Seller, and if such default arises out of causes beyond the control of both Seller and the vendor or subcontractor, and without the fault or negligence of either of them, Seller shall not be liable for any excess costs for failure to perform, unless the goods to be furnished by the vendor or subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule. No cause shall constitute a basis for excusable delay unless Seller has notified Buyer in writing of the existence of such cause within ten (10) business days from the beginning thereof.

(ii) If a Purchase Order is terminated under this clause, Buyer, in-addition to any other rights provided in this section, may require Seller to transfer title and deliver to Buyer in the manner and to the extent directed by Buyer (i) any completed goods and (ii) any partially completed goods and materials, parts, components, tools, dies, jigs, fixtures, plans, specifications, drawings, information, and contract rights (hereinafter called "contract materials") as Seller has specifically produced or specifically acquired for the performance of such part of the Purchase Order as has been terminated; and Seller shall upon direction of Buyer, protect and preserve property in the possession of Seller in which Buyer has an interest. Payment for completed goods delivered or rendered to and accepted by Buyer shall be at the Purchase Order price. Payment for contract materials delivered to and accepted by Buyer, and for the protection and preservation of property, shall be in an amount agreed upon by Seller and Buyer. Buyer may withhold from amounts otherwise due Seller for such completed goods or contract materials such sums as Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.

(iii) If, after notice of termination of this order under this provision, it is determined for any reason that Seller was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the section entitled TERMINATION FOR CONVENIENCE.

(c) As used in paragraph (b) of this clause, the terms "subcontractor" and "sub-contractors" mean subcontractor(s) at any tier and the terms "vendor" and "vendors" mean vendor(s) at any tier.

## TERMINATION FOR CONVENIENCE

(a) Buyer may, by written notice, terminate performance or work under an order in whole or from time to time in part by written notice of termination, whereupon Seller will stop work on the date and to the extent specified in the notice and terminate all orders and subcontracts to the extent they relate to the terminated work.

(b) Upon receipt of a notice of termination and except as otherwise directed by Buyer, Seller will:

- promptly advise Buyer of the quantities of applicable work and material on hand or purchased prior to termination and the most favorable disposition to Buyer that Seller can make thereof;
- comply with Buyer's instruction regarding transfer and disposition of title of such work and material; and
- submit all claims resulting from such termination within sixty (60) calendar days after receipt of such notice of termination.

(c) Buyer will have the right to check such claims at any reasonable time or times by inspecting and auditing records, facilities, work or material of Seller relating to the order. Seller shall keep these records for one year after final settlement without cost to Buyer.

(d) Buyer will pay Seller, without duplication, the order price for finished work previously delivered and accepted by Buyer, the reasonable value or cost (whichever is higher) of work in process and raw material allocable to the terminated work based on any audit Buyer may conduct and on generally accepted accounting principles less the reasonable value or cost (whichever is higher) of any items used or sold by Seller or Seller's subcontractor.

(e) Buyer will not make payments for finished work, work in process, or raw material fabricated or procured by Seller in excess of any order. Notwithstanding the above, payments made under this clause shall not exceed the aggregate price specified in the order plus payments otherwise made or to be made.

(f) Upon failure of Seller to submit Seller's termination claim within the time allowed, Buyer may determine, on the basis of information available to Buyer, the amount, if any due to Seller in respect to the termination.

(g) Payment made under this clause will constitute Buyer's only liability in the event this order is terminated hereunder.

## GIFTS/KICKBACKS

Buyer's policy is that its employees may not accept gifts, entertainment, or other gratuities (collectively called "kickbacks") from anyone seeking a contract with or purchase from Buyer (in whatever form including purchase orders), other than customary business courtesies that are reasonable in frequency and value. Seller represents and warrants to Buyer that neither Seller (including any of its officers, partners, employees, or agents) nor any subcontractor below Seller or subcontractor employee has or will:

- provide(d) or attempt(ed) to provide or offer(ed) to provide any kickback;
- solicit(ed), accept(ed), or attempt(ed) to accept any kickback; or
- include(d), directly or indirectly, the amount of any kickback in the price applicable to a Purchase Order or in the subcontract price charged by any subcontractor to a higher tier subcontractor.

## INDEMNIFICATION/HOLD HARMLESS

(a) To the fullest extent permitted by law, Seller covenants and agrees at all times to protect, defend, hold harmless and indemnify Buyer and its affiliated companies and their respective directors, officers, employees, successors and assigns from and against any and all claims for loss, costs (including reasonable attorneys' fees), damage or injury and from and against any suits, actions, or legal proceedings of any kind brought against or sustained by Buyer, or such other parties by or on account of any person, persons, or entities, or on account of any personal injuries or property damage received or sustained by any person, persons, or entities including Buyer in any manner (howsoever arising, including but not limited to, by reason of negligence, breach of warranty, defect in design, material, workmanship, services, environmental, health or safety laws or regulations or otherwise, and even though strict liability be claimed), directly or indirectly caused by, incident to, or growing out of defects in the design, manufacture or materials used in the goods, or negligence in the manufacture or

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installation of the goods or any other services or the breach of any warranties contained in this order.

- (b) Notwithstanding the above provision, Buyer shall have the right, at its own election, and without releasing any obligation, liability, or undertaking of Seller to indemnify Buyer hereunder, to:
- cooperate in the defense of such claim;
  - with permission of the court, to intervene in any such suitor action; and
  - supersede Seller in the defense of any such claims, suits actions, or legal proceedings.
- (c) Seller further agrees to:
- promptly pay the settlement or judgment pertaining to all such claims, suits, actions or legal proceedings; to hold harmless and indemnify Buyer therefrom; and
  - promptly pay the costs of attorneys' fees or other expenses incurred in any such defense either by Seller and/or Buyer, and to hold harmless and indemnify Buyer therefrom.
- (d) Seller agrees that in any instance where such claims in any way affect Buyer's interests under a Purchase Order or otherwise, Seller shall not consummate any settlement without Buyer's prior written consent.
- (e) Seller's covenant of indemnity herein shall continue in full force and effect notwithstanding the termination of a Purchase Order.

## CONFIDENTIAL DISCLOSURE

- (a) Technical or business information and ideas disclosed to Seller in connection with a Purchase Order at any time in any form (including, but not limited to, orally, visually by examination of the features of parts, equipment, tools, gauges, patterns, or other items furnished or disclosed to Seller by Buyer, or in designs, processes, drawings, specifications, reports, data, tools, gages or goods provided hereunder) which Buyer considers proprietary and so indicates to Seller at the time of disclosure or within a reasonable time thereafter ("Proprietary Information") are entrusted to Seller solely for use on behalf of Buyer in the performance of Buyer's Purchase Order. Seller shall keep Proprietary Information in confidence and shall neither use (other than in performance of Buyer's orders) nor disclose such Proprietary Information except as authorized in writing by Buyer. On completion of an order, Seller shall deliver to Buyer or destroy to Buyer's satisfaction all material (including but not limited to, documents, software, scrap, tools and goods which may be defective, partially completed, or completed) embodying Proprietary Information, unless otherwise instructed by Buyer. Any such material disposed of by Seller at any time other than by delivery to Buyer shall be altered to such an extent that prevents discovery of any Proprietary Information embodied therein. However, Seller shall not be liable for use or disclosure of any Proprietary Information which is shown by clear and convincing proof to either have been known to Seller at the time of receipt from Buyer, or to be in the public domain or to subsequently come into the public domain through no fault of Seller.
- (b) Information Developed by Seller - Information and ideas developed by Seller under or in the course of performing a Purchase Order for Buyer shall be owned by and disclosed to Buyer and, if Buyer so indicates to Seller, such information and ideas shall be treated as Proprietary Information in accordance with the provisions of paragraph (a) hereof.
- (c) Buyer shall have the right to audit all pertinent books and records of Seller in order to verify compliance with this Section.
- (d) In all subcontracts for performance of work related to a Purchase Order, Seller shall include provisions which provide to Buyer the same rights and protections as provided in this Section.

## PRICE WARRANTY

Seller warrants that the prices for the articles sold Buyer are not less favorable than those currently extended to any other customer for the same or similar articles in similar quantities. In the event Seller reduces its price for such articles during the term of a Purchase Order, Seller agrees to reduce the prices hereof correspondingly. Seller warrants that prices shown on a Purchase Order shall be complete, and no additional charges of any type shall be added without Buyer's express written consent. Such additional charges include, but are not limited to, shipping (if FOB, OF or SPFA), packaging, labeling, custom duties, taxes, storage, insurance, boxing, and crating.

## DELIVERY

Time is of the essence, and if delivery of items or rendering of services is not completed by the time promised, Buyer reserves the right without liability in addition to its other rights and remedies to terminate the Purchase Order by notice effective when received by Seller as to items not yet shipped or services not yet rendered and to purchase substitute items or services elsewhere and charge Seller with any loss incurred. Substitutions will not be accepted. The supplies must be delivered by the date(s) specified, but should not be delivered earlier than one (1) week prior to such date(s) unless prior written approval for earlier delivery is given by Buyer. Seller will bear the risk of loss until the goods are delivered, unloaded, installed or accepted, whichever is later.

## TITLE

Subject to the section TERMINATION FOR DEFAULT, title to goods shall pass to Buyer upon any payment to Seller, whether it be full or partial payment, our upon shipment of the goods whichever is sooner.

## TOXIC, HAZARDOUS OR CARCINOGENIC SUBSTANCES

Seller warrants that each chemical substance delivered pursuant to a Purchase Order is on the Inventory List (see 40 C.F.R. 710) published by the Environmental Protection Agency pursuant to the Toxic Substances Control Act (15 U.S.C. 2601 a seq.) at the time of such delivery, and that Seller has complied with all applicable Federal, State and local laws and regulations governing the shipping, labeling and handling of the substance. If Seller provides a product under a Purchase Order which contains a toxic or hazardous substance as identified under Occupational Safety and Health Standards, 29 C.F.R. 1910.20 or 29 C.F.R. 1910.1000 a seq. (subpart z), or a carcinogenic substance, Seller shall provide Buyer with a Material Safety Data Sheet (OSHA Form 20 or equivalent) and any other information required by applicable law with, the initial shipment of the product and when a change in formulation occurs. Seller shall label each container of such product in a clearly legible and conspicuous form, stating that a toxic or hazardous substance is contained therein and providing Buyer with a copy of any restrictions on handling or use. Spills of any liquid, except clean water, caused in whole or in part by Seller will be cleaned up by Buyer. Spill cleanup and disposal costs incurred by Buyer will be charged back to Seller or deducted from amounts due Seller.

## INTERPRETATION

It shall be the obligation of Seller to bring to the attention of Buyer at the earliest possible time any ambiguities, discrepancies, inconsistencies, or conflicts herein or in or between any specifications, drawings, or other documents incorporated by reference herein. Ambiguities, inconsistencies, or conflicts in a Purchase Order will not be strictly construed against the drafter of the contract language; rather, they shall be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the intentions of the parties at the time of contracting.

## PARTIAL INVALIDITY

If in any instance any provision of these terms and conditions shall be determined to be invalid or unenforceable under any applicable law, such provision shall not apply in such instance, but the remaining provisions shall be given effect in accordance with their terms.

## WAIVER

Either party's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or waiver of any breach hereunder shall not thereafter waive any such terms, conditions, or privileges.

## APPLICABLE LAW AND FORUM

This order shall be interpreted in accordance with the plain English meaning of its terms and the construction thereof shall be governed by the laws of the State of Connecticut, USA excluding its choice of law provisions. Services shall be deemed to be goods for the purposes of this paragraph (i.e., the application of governing law). Buyer may, but is not obligated to, bring any action or claim relating to or arising out of this order in the appropriate state or federal court in Connecticut, and Seller hereby irrevocably consents to personal jurisdiction and venue in any such court, hereby appointing the Secretary of State as agent for receiving service of process. Any action or Claim by Seller with respect hereto shall also be brought in such appropriate state or federal court in Connecticut, if Buyer so elects. Accordingly, Seller shall give written notice to Buyer of any such intended action or claim, including the intended venue thereof, and shall not commence such action or claim outside of Connecticut if Buyer, within thirty (30) days from receipt thereof, makes its election as aforesaid.

## CAPTIONS

Captions, as used herein, are for convenience of reference only and shall not be construed to limit or extend the language of the provisions to which such captions may refer.

## CUMULATIVE REMEDIES

The rights and remedies herein reserved to Buyer shall be cumulative and additional to any other or further rights and remedies' provided in law or equity.

## NEWS RELEASES

Seller shall not make any news release of information pertaining to an order without prior approval of Buyer.

## ORDER OF PRECEDENCE

Any inconsistency or ambiguity in this order shall be resolved by giving precedence in the following order: (a) typewritten changes on the face of the Purchase Order or Supplement, (b) these Purchase Order Terms and Conditions and special fly sheets incorporated by reference or otherwise into the Purchase Order or a Supplement and (c) other documents incorporated by reference into this order, unless a contrary intention is expressly indicated on the face of the Purchase Order.

## EXPORT CONTROL

Both Seller and Buyer agree to comply with the Export Laws and Regulations of the United States with regard to technical data contained in or made available in connection with a Purchase Order. Compliance with Export Laws and Regulations does not relieve Seller of its obligations under any other agreement between the parties with respect to confidentiality (including Section 17 hereof) or restricting the disclosure of information.

## INSPECTION OF RECORDS

If this order is a time and material or construction order or provides for the payment of any amounts prior to the completion hereof, including, without limitation, progress payments, Seller agrees that its books, records and its plant, or such parts of its plant as may be engaged in the performance of this order, shall at all reasonable times be subject to inspection and audit by any authorized representative of any Department of the United States Government. Additionally, Seller agrees that its books, records and its plant, or such parts of its plant as may be engaged in the performance of this order, shall at all reasonable times be subject to inspection and audit by any authorized representative of Buyer notwithstanding any other provision herein to the contrary.

## DUTY TO PROCEED

Except as expressly authorized in writing by Buyer, no failure of Seller and Buyer to reach any agreement provided for by the terms of this order shall excuse Seller from proceeding diligently with the performance of this order.

## OZONE DEPLETING SUBSTANCES

Seller agrees that the goods delivered hereunder shall be accurately labeled in accordance with the requirements of Section 611 of the 1990 Clean Air Act Amendments and the regulations promulgated thereunder, including but not limited to requirements contained in 40 C.P.R. Part 82.114 and 82.116- At Buyer's request. Seller shall certify in a form satisfactory to Buyer whether the goods were manufactured with a controlled substance, as defined in 40 C.F.R. Part 82.104.

## ATTORNEYS' FEES

In the event Buyer should bring an action for enforcement of the terms and conditions of this order, Seller agrees that Buyer shall be entitled to award of its reasonable attorneys' fees and court costs associated with such enforcement proceedings.

## SUBCONTRACTORS AND AGENTS

Seller shall hold harmless and indemnify Buyer from and against all claims and liabilities (including attorneys' fees), however arising and whether based on contract, tort, strict liability, negligence, statute, or any other theory, arising from, based upon, or connected with the performance of this order by Seller's agents and subcontractors. Seller's covenant of indemnity herein shall continue in full force and effect notwithstanding the termination of this order.

## ELECTROSTATIC DISCHARGE CONTROL REQUIREMENTS

Sellers of electrical and electronic parts, assemblies and equipment (parts) shall determine if any parts supplied to Buyer are electrostatic discharge (ESD) sensitive and apply the following conditions: Seller's of ESD sensitive electrical and electronic parts shall design, manufacture, and test these parts using good commercial ESD control practices when testing, fabricating, and repairing pans. Electrical and electronic parts supplied to Buyer which are susceptible to ESD damage as delivered shall be properly handled and packaged to prevent ESD damage including, but not limited to static safe bags, Faraday cages, etc. Packages containing ESD sensitive parts shall be marked with an appropriate caution label.

## LIQUIDATED DAMAGES

Liquidated damages (LD) are applicable to this purchase order. LD terms and conditions are set forth on an attachment to the Purchase Order.

## BUYER'S EH&S REQUIREMENTS

Seller is required to comply with Buyer's industrial security and environmental, health and safety policies, procedures, rules, requirements and practices for the protection of the plant, material, equipment and personnel and shall require any of its subcontractors to so comply Buyer will have no liability from enforcing the forgoing.

## INDEPENDENT CONTRACTOR

Seller's relationship to Buyer shall be solely that of an independent contractor (not an employee).